



2011

Unfair Labor Practice Charge Before the FLRA

The 5 W's

Who, What, Where, When & Why

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Course Objectives

- Who can file an Unfair Labor Practice (ULP) Charge?
- What is a ULP?
- Where is a ULP filed?
- When can an ULP be filed?
- Why is a ULP filed?

Background

- The Federal Labor Relations Authority (FLRA) was created as part of the Civil Service Reform Act of 1978.
- The FLRA is comprised of :
 - The Authority
 - Office of the General Counsel
 - Federal Service Impasses Panel

FLRA

- Mission:
 - To promote stable, constructive labor relations that contribute to a more effective and efficient Government

What is a ULP?

- A violation of a statutory right under labor-relations statutes
- Can be initiated by an employee, a union or management
- Are processed by the Federal Labor Relations Authority

Who Can File a ULP?

- Union
- Employee
- Agency

Authority regulations state that any person may charge an activity, agency, or labor organization of having engaged in an ULP prohibited under 5 U.S.C. 7116.

Why Are ULPs Filed?

- Because an individual, union or agency believes there has been a violation of their rights provided under the Statute. Filing a ULP charge is the legal remedy for enforcing such rights.

ULPs Filed Against the Agency

- 7116(a)(2) – It shall be an unfair labor practice for an agency to encourage or discourage membership in any labor organization by discrimination in connection with hiring, tenure, promotion, or other conditions or employment.

ULPs Filed Against the Agency

- Section 7102 of the Statute protects an employee's right to form, join, or assist unions or to refrain from such activity.

EXAMPLES:

- Filing a petition to form a Union
- Serving as a Union Steward
- Filing a grievance
- Giving a statement to an FLRA Agent in a ULP
- Participating in contract negotiations

ULPs Filed Against the Agency

- 7116(a)(3) of the Statute provides that it shall be an unfair labor practice for an agency to sponsor, control, or otherwise assist any labor organization other than to furnish upon request customary and routine services and facilities if the services and facilities are also furnished on an impartial basis to other labor organizations having equivalent status.

ULPs Filed Against the Agency

- Section 7116(a)(4) provides that it shall be an unfair labor practice for an agency to discipline or otherwise discriminate against an employee because the employee has filed a complaint, affidavit, or petition or has given any information or testimony under this chapter.

ULPs Filed Against the Agency

- Section 7116(a)(5) of the Statute provides that it shall be an unfair labor practice for an agency to refuse to consult or negotiate in good faith with a labor organization as required by this chapter.

4 Main Categories of 7116(a)5 Violations

- Unilateral Change
- Surface Bargaining
- Bypass
- Bad Faith

Defenses to 7116(a)(5) Allegations

- Non-negotiable
- Covered By
- *De Minimis*
- Union waives right to negotiate

ULPs Filed Against the Agency

- 7116(a)(6) of the Statute provides that it shall be an unfair labor practice for an agency to fail or refuse to cooperate in impasse procedures and impasse decisions as required by this chapter.

ULPs Filed Against the Agency

- Section 7116(a)(7) provides that it shall be an unfair labor practice for an agency to enforce any rule or regulation (other than a rule or regulation implementing Section 2302 of this Title) which is in conflict with any applicable collective bargaining agreement if the agreement was in effect before the date the rule or regulation was prescribed.

ULPs Filed Against the Agency

- Section 7116(a)(8) of the Statute provides that it shall be an unfair labor practice for an agency to otherwise fail or refuse to comply with any provision of this chapter.

3 Categories of 7116(a)(8) Cases

- Duty to supply information
- Formal meetings
- Investigatory meetings

ULPs Filed Against the Union

- To interfere with, restrain, or coerce any employee in the exercise of any right under the Statute.
- Cause or attempt to cause an agency to discriminate against any employee in the exercise of any rights under the Statute.
- Coerce, discipline, fine or attempt to coerce a member of the labor organization as punishment, reprisal, or for the purpose of hindering or impeding the member's work performance or productivity as an employee or the discharge of the member's duties as an employee.

ULPs Filed Against the Union

- To discriminate against an employee with regard to the terms or conditions of membership in the labor organization on the basis of race, color, creed, national origin, sex, age, preferential or nonpreferential civil service status, political affiliation, marital status or handicapping condition;
- To refuse to negotiate in good faith with the agency.

ULPs Filed Against the Union

- To fail to cooperate in impasse procedures and/or directions;
- To call, or participate in, a strike, work stoppage, or slowdown, or picketing of a agency in a labor-management dispute.
 - To condone any activity as described above.
- To otherwise fail or refuse to comply with any provision of this chapter.

ULPs Filed Against the Union

- The union may not deny membership to any employee in the appropriate unit, except for failure to:
 - Meet reasonable occupational standards uniformly required for admission, or
 - Tender dues uniformly required as a condition of acquiring and retaining membership.

Where is a ULP Filed?

- ULP's are filed with the appropriate Regional Office of the FLRA.
- Regional Offices:
 - Atlanta
 - Boston
 - Chicago
 - Denver
 - Dallas
 - San Francisco
 - Washington DC

When Is a ULP Filed?

- Charge must be filed within 6 months of the date of the alleged violation (unless the charging party is prevented from filing by concealment or failure to perform duty owed).

Timeliness

- Section 7118(a)(4)(A) of the Statute provides that except as provided in subparagraph (B) of that section, no complaint shall be issued on any alleged unfair labor practice which occurred more than 6 months before the filing of the charge with the Authority.
- Section 7118(a)(4)(B) provides that if the General Counsel determines that the person filing any charge was prevented from filing the charge during the 6-month period referred to in subparagraph (A) of this paragraph by reason of –
 - Any failure of the agency or labor organization against which the charge is made to perform a duty owed to the person, or
 - Any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period.
 - the General Counsel may issue a complaint based on the charge if the charge was filed during the 6-month period beginning on the day of the discovery by the person of the alleged unfair labor practice.

Calculating Timeliness

- The six-month statutory filing period for filing a ULP charge may be triggered:
 - When a party expressly notifies a party that it will not comply with the obligations required; or
 - When an established deadline for implementing required obligations passes without the party taking any action.

No Definitive Triggering Event

- What is necessary to effect compliance in terms of time and effort?
- What efforts by one or both sides to communicate with the other to inquire about or relate the status of compliance activities.

How to File a Complaint

- Must be filed on the appropriate FLRA Form:
 - Charge against an agency – Form 22
 - Charge against a labor organization – Form 23
- Must be filed within 6 months of the alleged violation.
- Should contain a clear and concise statement of the alleged violation.

Charge Received by FLRA

- When the charge is received the FLRA Regional Office will send an opening letter to the parties that identify the FLRA agent assigned to investigate the charge.
- The Agency will be asked to designate a representative as the point of contact for the investigation.
 - Form 75

Charge versus Complaint

- Charge
 - Document filed by the Charging Party
- Complaint
 - Document issued by the General Counsel after finding a charge to be meritorious

Procedural Defenses to the Charge

- Timeliness
- 7116(d) grievance preclusion (must have same parties, facts, and legal theory)
- The same or an almost identical charge was previously filed with the FLRA and was dismissed.
- A negotiability appeal on the identical issue is pending and the ULP charge should be held in abeyance.

Participation During the Investigation

- Make union officials, employees and agency supervisor/managers available to give sworn testimony regarding the matter being investigate.
- Produce evidence relevant to the investigation
- Provide statements of positions on the matter being investigated.

4 Possible Dispositions of Charges

- Dismissed
- Withdrawn
- Settled
- Complaint

2 Possible Complaint Resolutions

- Trial
- Settle

Alternative Complaint Resolutions

- Private Settlement
- Bilateral Settlement
- Unilateral Settlement

Question????

- Which statement by a supervisor to an employee would be considered a ULP?
- a) You do not have to let a union representative into your house.
 - b) I heard you had a lot to say at the union meeting.
 - c) I have a right to tell you how I feel about issues the union has raised.
 - d) The election is by secret ballot; no one will know how you vote.